BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996

CC Docket No. 96–98

COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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Summary

In these Comments, GSA addresses issues concerning application of the Commission's interconnection rules to dedicated transport links between incumbent LECs' wire centers and the points of presence of interexchange carriers. These links are called "entrance facilities."

At the outset, GSA explains that maximum unbundling is vital to expand the local telecommunications infrastructure. Thus, from its perspective as an end user, GSA urges the Commission to require incumbent LECs to provide entrance facilities to their competitors as unbundled network elements ("UNEs"). Moreover, GSA recommends that the Commission order incumbent LECs to employ the same pricing rules — charges reflecting economic costs — for entrance facilities as for all other UNEs.

GSA also urges the Commission to reject claims that LECs would be financially burdened in meeting universal service initiatives by any requirements to unbundle facilities which are cross–elastic with special access links. GSA explains that revenues from special access services are only a small component of the LECs' total operating revenues, and that revenues from other services are increasing so rapidly that LECs could absorb significant reductions in special access revenues. Moreover, as GSA notes, there is considerable leeway — and abundant justification — for reductions in the LECs' earnings.

Finally, GSA explains that the Commission should prohibit carriers from placing any usage restrictions on entrance facilities. Limits on competitors' applications or network configurations are prohibited by the Telecommunications Act and by existing Commission rules. Moreover, such restrictions would be contrary to public policy because they would impede development of more service alternatives and prevent "technologically neutral" competition between potential suppliers.

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The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") on the Fourth Further Notice of Proposed Rulemaking ("Further Notice") released on November 5, 1999. The Further Notice seeks comments and replies on issues concerning provision of unbundled network elements ("UNEs") to foster competition for telecommunications services.

I. INTRODUCTION

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. From their perspective as end users, the FEAs have consistently supported the Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

The Telecommunications Act of 1996 ("Telecommunications Act') restructured local telecommunications markets by placing obligations on incumbent local

exchange carriers ("LECs") to share their networks with competitors.[1] In August 1996, the Commission released an extensive set of rules for implementing these requirements.[2] These rules were challenged by various parties, and the challenges were consolidated in a proceeding before the U.S. Court of Appeals for the Eighth Circuit. The findings by that court in 1998 were appealed to the U.S. Supreme Court.

On January 25, 1999, the Supreme Court issued its decision in *AT&T v. Iowa Utilities Board*, which affirmed in part and remanded in part the decision of the court below.[3] In that decision, the court addressed several aspects of the Commission's interconnection rules, including the selection of unbundled network elements ("UNEs") and the platforms to provide those elements. Also, the court directed the Commission to revisit its interpretation of the unbundling obligations in Section 251 of the legislation.

On November 5, 1999, the Commission released the *Third Unbundling Order* to respond to the directions of the Supreme Court by giving substance to the "necessary" and "impair" standards in Section 251(d)(2) of the legislation.[4] Recognizing these standards, the *Third Unbundling Order* lists the network elements that should be unbundled nationally subject to limited geographic and market exceptions.[5] In addition, the order reaffirms the authority of state regulators to require incumbent LECs to unbundle network elements as long as the unbundling obligations are consistent

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1 Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* ("Telecommunications Act").

2 *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96–98, First Report and Order, released August 8, 1996.

3 AT&T v. Iowa Utils. Bd., 119 S. Ct. 721 ("*Iowa Utils. Bd.*")

4 *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–98, Third Report and Order released November 5, 1999 ("*Third Unbundling Order*").

5 *Id.*, para. 198.

with Federal legislation, the Commission's rules, and national policy. Finally, the order states that incumbent LECs must offer combinations of network elements, including loops and multiplexing/concentrating equipment, if they are already combined.

The *Third Unbundling Order* specifically defines many of the obligations on incumbent LECs for unbundling their networks. However, the Commission defers consideration of several issues because the record has not been established to determine how interconnection rules should be applied to dedicated transport links between incumbent LECs' wire centers and the points of presence of interexchange carriers.[6] These connections are called "entrance facilities."[7]

In the Further Notice, the Commission asks parties to provide their views on issues concerning unbundling of entrance facilities. First, the Commission seeks comments on whether LECs have an obligation to provide entrance facilities at rates reflecting the cost–based pricing methodology previously adopted for UNEs.[8] Second, the Commission asks parties to address the policy implications of a reduction in special access revenues on the universal service program.[9] Finally, the Commission seeks inputs on whether the Commission should establish any limitations on the competitive LECs' use of entrance facilities that they obtain as UNEs.[10]

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6 *Id.*, para. 489.

7 *Id.*

8 Further Notice, paras. 494–95.

9 *Id.*, para. 496.

10 *Id.*, para. 495.

II. INCUMBENT LECs SHOULD PROVIDE ENTRANCE FACILITIES TO COMPETITORS AS UNBUNDLED NETWORK ELEMENTS.

A. Maximum unbundling is vital to expand the local telecommunications infrastructure.

From its perspective as an end user, GSA urges the Commission to require incumbent LECs to provide entrance facilities as UNEs when requested by competitive carriers. In successive rounds of comments following the Supreme Court's decision, dozens of users and competitive carriers addressed the importance of unbundling in expanding the local telecommunications infrastructure.[11] Indeed, the availability of entrance facilities is particularly vital for developing more competition because these facilities are the links that competitive LECs may need to offer interexchange services in conjunction with other services they offer to their own subscribers.

When it first implemented unbundling requirements in the *Local Competition First Report and Order*, the Commission concluded that interoffice facilities connecting LEC switches should be denominated as UNEs.[12] In particular, the Commission required incumbent LECs to provide dedicated and shared transport between these switches as UNEs pursuant to section 251(c)(3) of the Telecommunications Act.[13] The Commission found that such access was technically feasible and that it would promote competition in local exchange markets.[14]

The Commission has continued to acknowledge the need to make unbundled transport facilities between LEC switches available to competitive LECs. In the *Third*

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11 See GSA Reply Comments responding to the Second Further Notice of Proposed Rulemaking, June 10, 1999, pp. 4–6.

12 Order, para. 318 citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–98, First Report and Order, 11 FCC Rcd 15499 ("Local Competition First Report and Order"), para. 12.

13 *Local Competition First Report and Order*, para. 439.

14 *Id.*

Unbundling Order, the Commission states that although competitive LECs have deployed transport facilities along certain routes, the evidence shows that at many locations it is not economical to self–provision or to obtain transport from non–incumbent LEC sources.[15]

The Commission released its Second Further Notice of Proposed Rulemaking in this proceeding concurrent with the *Local Competition First Report and Order.*[16] GSA submitted Comments and Reply Comments responding to that notice to explain that maximum unbundling is a prerequisite for more competition between carriers providing local telecommunications services throughout the nation.[17] Comments submitted by more than 50 parties in addition to GSA — including users, carriers and regulators — described the need for additional unbundling in expanding the local telecommunications infrastructure.[18]

One of the comments in response to the Second Further Notice, a submission by the Public Utility Commission of Texas ("Texas Commission"), explains that unbundling is vital in less populated areas where it is not economically feasible for competitors to deploy their own facilities. In its comments, the Texas Commission states that most competitive LECs in that state have little network infrastructure of their own, so they must depend on resale or lease of network elements.[19] Also, the Texas Commission reports that in rural areas of the state, incumbent LECs are almost always

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15 *Third Unbundling Order*, para. 321.

16 Second Further Notice of Proposed Rulemaking, FCC 99–70, released April 16, 1999.

17 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–98 and *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96–198, Comments of GSA, submitted May 26, 1999, and Reply Comments of GSA submitted June 10, 1999.

18 *Id.*, See Reply Comments of GSA, pp. 4–6.

19 *Id.*, Comments of the Texas Commission, p. 13.

the sole source of network elements.[20] Furthermore, the Texas PUC notes that even in areas where some competition has developed, "The central question is whether a competitor can obtain reasonably comparable network elements from non–incumbent (and non–regulated) carriers at rates, terms, and conditions that will allow a meaningful opportunity to compete."[21]

If competitive LECs are unable to obtain the necessary transmission capability between incumbent LECs' central office through self–provisioning or non–incumbent LEC sources in most locations, competitors will have similar difficulties in obtaining links between their own central offices and the central offices of the LECs. Thus, GSA urges the Commission to adopt requirements that incumbent LECs make these facilities available to competitive LECs as UNEs at reasonable rates, terms, and conditions.

B. The same pricing rules should apply for entrance facilities as for all other UNEs.

The Telecommunications Act imposes a duty on incumbent LECs to provide access to UNEs at rates, terms and conditions that are just, reasonable, and non–discriminatory.[22] In the *Local Competition First Report and Order*, the Commission emphasized the importance of pricing all UNEs and interconnection services at their economic costs. Moreover, the Commission adopted a specific approach — total element long–run incremental costs ("TELRIC") — to accomplish this objective.[23] In its remand, the Supreme Court did not disturb the Commission's finding that incremental costs are the appropriate pricing standard for UNEs.

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20 *Id.*

21 *Id.*

22 Telecommunications Act, Section 251(c)(3).

23 *Local Competition First Report and Order*, paras. 618–837.

If the Commission designates entrance facilities as a required UNE — which GSA strongly recommends in these Comments — there is no basis for excepting this element from the general obligation to price all UNEs at incremental costs. In response to the Second Further Notice, the Joint Commenters addressed this point directly, urging the Commission to rule that cost–based pricing standards in section 252 of the Telecommunications Act should apply "to all UNEs and combinations of UNEs."[24] Moreover, the Joint Commenters stated:

> The Commission should indicate that it will foreclose any effort — by incumbent LECs or others — to lard UNEs with non–cost–based charges. The Commission should affirmatively conclude that competitive LECs may convert special access circuits to UNEs without payment of additional charges. Incumbent LECs must not be permitted to assess "glue charges" on UNEs. The Commission should also affirm that incumbent LECs may not assess [additional charges for] use of UNEs to provide exchange access service, and UNE prices may not include subsidies or embedded access charges.[25]

GSA concurs with the Joint Commenters' recommendations that these conditions apply to entrance facilities offered as UNEs.

III. REQUIREMENTS TO UNBUNDLE ENTRANCE FACILITIES WILL NOT BURDEN INCUMBENT LECs.

In an *ex parte* presentation to the Commission, BellSouth argued that allowing requesting carriers to obtain entrance facilities as UNEs would have significant impact on incumbent carriers' operating results.[26] BellSouth noted that entrance facilities are a direct (and often physically identical) substitute for incumbent LECs' regulated

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24 Comments of e.spire Communications, Inc., and Intermedia Communications, Inc., ("Joint Commenters") May 26, 1999, p. ii.

25 *Id.*, pp. ii–iii.

26 *Third Unbundling Order*, para. 485 citing BellSouth's August 9, 1999 *Ex Parte* at 1.

access services.[27] However, under the existing UNE pricing rules, entrance facilities would be priced far below existing special access charges. BellSouth contends that with this cross–elasticity, incumbent LECs would be forced to reduce special access charges, eroding revenue streams that have supported universal service initiatives.[28]

GSA urges the Commission to reject claims that LECs would be financially burdened by any requirement to unbundle entrance facilities. In the first place, revenues from special access services are only one component of total operating revenues. While special access services were responsible for $5.73 billion in revenues for all reporting LECs in 1998, this amount was only about 5.3 percent of the total revenues for these companies in that year.[29] Even for Regional Bell Operating Companies ("RBOCs"), special access services accounted for only 5.7 percent of total operating revenues.[30]

Moreover, the LECs' revenues are increasing so rapidly that these firms should be able to absorb cuts in revenues from special access services. For example, in 1997 all reporting LECs had operating revenues from services except special access totaling $98,578 million.[31] In 1998, this total revenue increased to $102,586 million.[32] Thus, even if LECs lost 25 percent of the $5.73 billion special access revenue

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27 *Id.*

28 Notice, para. 496.

29 Industry Analysis Division, *1998 Statistics of Communications Common Carriers*, December 3, 1999, Table 2.9, For "All Reporting Local Exchange Companies," Special Access Revenues were $4,895 million and Total Operating Revenues were $186,034 million.

30 *Id.*, For "Regional Bell Operating Companies," Special Access Revenues were $.5,730 million and Total Operating Revenues were $108,315 million.

31 *1997 Statistics of Common Carriers, Table* 2.9, For "All Reporting Local Exchange Companies," Special Access Revenues were $4,556 million and Total Operating Revenues were $103,134 million.

32 *1998 Statistics of Communications Common Carriers, Table* 2.9, For "All Reporting Local Exchange Companies," Special Access Revenues were $5,730 million and Total Operating Revenues were $108,316 million.

because of the bypass they claim will develop, the loss of $1.4 billion in revenue would be compensated nearly three fold by the gain of $4.0 billion in revenue from other services.

Finally, as GSA has reported, there is considerable leeway — and abundant justification — for reductions in the LECs' earnings. For example, GSA noted in its recent Comments in the Price Cap Performance Review that the interstate price cap system was not maintaining earnings ratios for the major LECs, which are all under price cap regulation, within a reasonable range.[33] According to a report published by the Commission's Industry Analysis Division, interstate rates of return for RBOCs ranged from 9.9 percent to 22.7 percent in 1998.[34] In that year, the unweighted average rate of return for these carriers was 15.33 percent, which is more than four percentage points above the 11.25 percent rate of return target employed in the universal service cost calculations.[35] In fact, only two units of one RBOC experienced a rate of return less than 11.25 percent.[36]

Considering the larger picture — revenues and earnings from all services — there should be no concern that bypass of special access resulting from requirements to unbundle entrance facilities will impair the ability of LECs to make proportionate and reasonable contributions to universal service initiatives.

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33 *In the Matter of Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94–1, and *Access Charge Review*, CC Docket No. 96–262, Comments of GSA, January 7, 1999, pp. 5–8.

34 *Id.*, Comments of GSA, p. 6, citing Industry Analysis Division, *Trends in Telephone Service*, September 1999, Table 15.1.

35 *Id.*

36 *Id.* Southwestern Bell Telephone Co. reported a rate of return of 9.91 percent and Southern New England Telephone Co. reported a rate of return of 10.99 percent.

IV. THE COMMISSION SHOULD PROHIBIT CARRIERS FROM PLACING USAGE RESTRICTIONS ON ENTRANCE FACILITIES.

A. The statute and the Commission's rules contemplate that competitive LECs will have complete flexibility to define their services.

In their *ex parte* filings, at least two incumbent LECs have requested the Commission to restrict a competitive LEC from obtaining UNEs in order to bypass existing special access services.[37] These LECs contend that such a limitation is necessary to prevent interexchange carriers from benefiting from the difference between special access rates and UNE prices, and to protect the incumbent carriers' revenue streams.[38] The Notice requests parties to address these assertions concerning the need for restrictions on the use of UNEs, including the issue of whether a competitive LEC may use UNEs to originate or terminate interstate message toll traffic to customers for whom the carrier does not provide local exchange service.[39]

From its perspective as a user seeking to increase opportunities for competition among all potential providers of telecommunications services, GSA urges the Commission to reaffirm that incumbent LECs may not restrict the use of entrance facilities that competitive LECs obtain as UNEs. Restrictions on competitors' applications or network configurations are outlawed by the Telecommunications Act, prohibited by existing Commission rules, and harmful to the development of more competition.

In establishing access standards for UNEs, the Telecommunications Act requires the Commission to consider whether the failure to provide access to network

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37 *Third Unbundling Order*, para. 483, n. 974 citing Bell South August 9, 1999 *Ex Parte* and SBC August 11, 1999 *Ex Parte*.

38 *Third Unbundling Order*, para. 483.

39 *Id.*, paras. 494, 496.

elements would impair the "ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[40] Similarly, the section of the same legislation setting forth unbundling requirements requires incumbent LECs to provide nondiscriminatory access to network elements on an unbundled basis to any requesting telecommunications carrier "for the provision of a telecommunications service," without restriction or specification.[41] In short, the Telecommunications Act is clear that competitive LECs have the sole discretion to determine which services they will provide with UNEs acquired from incumbent carriers.

Moreover, as the Joint Commenters explained, the Commission's rules and orders have consistently supported the position that usage restrictions on UNEs are not appropriate except in extremely limited circumstances.[42] For example, in its rules implementing section 251(c)(3) of the Telecommunications Act, the Commission stated:

> An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of the requesting telecommunications carrier to offer a telecommunications service in a manner that the requesting telecommunications carrier intends.[43]

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40 47 USC §251(d)(2)(B).

41 *Id.*, §251(c)(3).

42 Submission of Joint Commenters, p. 14. The exception applies only to local switching and not to entrance facilities that are the subject of the instant Comments. The Commission has stated that a requesting carrier acquiring an unbundled local switching element for an end user may not use that switching element to provide interexchange service to end users from whom the requesting carrier does not also provide local exchange service. See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Reconsideration, 11 FCC Rcd 13042, para 13.

43 *Id.*, citing 47 CFR § 51.309(a).

In addition, the Commission has stated that "[t}he only limitation that the statute imposes on the definition of a network element is that it must be 'used in the provision of a telecommunications service.'"[44]

GSA also concurs with these findings by the Commission. They provide solid foundation for a rule that incumbent LECs may not place any limits on competitive LECs' use of UNEs.

B. Usage restrictions would impede development of competition and not provide equal opportunities for all competitors.

In addition to violating the statute and the Commission's rules, restrictions on the use of entrance facilities as UNEs would be contrary to public policy because they would impede the development of competition. Restrictions on competitive LECs' services would prevent innovative carriers from using UNEs to deploy advanced telecommunications services, particularly frame relay, high–capacity Internet access, and voice–over–data applications.

In addition to presenting a barrier to the development of additional services potentially benefiting all end users, restrictions on UNEs are likely to violate public policy by discriminating among different types of competitors. For example, if an incumbent LEC is permitted to restrict access to loop, multiplexer and transport combinations to conventional local exchange or low–speed Integrated Switched Digital Network ("ISDN") service, competitors favoring packet–switched technologies are disadvantaged. Similarly, another restriction would favor firms seeking to deploy circuit–switched technologies.

To implement the goals of the Telecommunications Act, it is vital that rules concerning application of UNEs be "technology neutral" so that market forces rather

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44 *Local Competition First Report and Order*, para. 261 (emphasis provided).

than regulatory distinctions shape the nation's telecommunications infrastructure. Indeed, the Commission has stated, "Congress made clear that the Telecommunications Act is technologically neutral and is designed to ensure competition in all telecommunications markets."[45]

As a practical matter, it is unlikely that any restrictions on the use of entrance facilities would be competitively neutral among all groups of carriers. Consequently, for this additional reason as well, GSA urges the Commission to rule that competitive LECs may employ entrance facilities obtained as UNEs in providing any services that they seek to offer to their own subscribers regardless of which services their subscribers obtain from competitive or incumbent carriers.

45 *In the Matter of Deployment of Advanced Telecommunications Capability*, CC Docket No. 98–147, First Report and Order, para. 11.

V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Comments.

Respectfully submitted,

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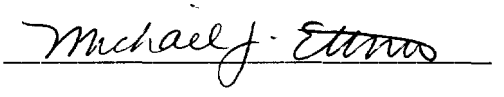

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January 12, 2000

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I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 12th day of January, 2000, by hand delivery or postage paid to the following parties.

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